

# SENATE, No. 876

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## STATE OF NEW JERSEY 218th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**SYNOPSIS**

Revises process for development and administration of Transportation Trust Fund projects and capital program oversight; establishes transportation research center.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1   **AN ACT** concerning the administration of Transportation Trust Fund  
2       projects supplementing Title 27 of the Revised Statutes, and  
3       amending P.L.1984, c.73.

4  
5       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8       1. (New section) a. For each capital project funded by the  
9       authority, including transportation projects and public  
10      transportation projects, the authority, in conjunction with the  
11      department and the New Jersey Transit Corporation, may contract  
12      with consulting engineers to prepare an estimated project schedule  
13      (1) for the acquisition of rights-of-way and (2) for the construction  
14      of each project. The consulting engineer shall also estimate the  
15      amounts which shall be required during each six-month period for  
16      estimated costs of construction of each project. Thereafter, at least  
17      once in each six-month period during the construction of a project,  
18      the authority may require the consulting engineers to prepare a  
19      progress report updating the project schedule for the acquisition of  
20      real property for each project and construction progress, which may  
21      include comparisons of the actual time elapsed, actual costs,  
22      estimated time to completion, and estimated total cost between the  
23      most recent six-month period and those same actual and estimated  
24      times and costs in prior progress reports. Copies of each progress  
25      report shall be maintained on the authority's website and shall be  
26      submitted to the Governor and, pursuant to section 2 of P.L.1991,  
27      c.164 (C.52:14-19.1), to the Legislature.

28      b. For funds provided by the authority to the department or the  
29      New Jersey Transit Corporation for non-project costs, the authority  
30      may contract with an outside consultant to prepare a report which  
31      tracks, according to State capital program line items in each annual  
32      appropriations act, an estimated schedule for the expenditure of  
33      appropriated funds, and a description of how funds are being  
34      expended, including, but not limited to, contracts to be paid from  
35      each capital program line item, the amount of staff or outside  
36      consultants to be paid from each capital program line item, and  
37      measurable policy outcomes relating to each capital program line  
38      item which shall be required during each six-month period until an  
39      appropriation has been fully expended. Once in each six-month  
40      period in which the State appropriations of non-project  
41      transportation capital funds in a given fiscal year have not been  
42      fully expended, including if that period extends beyond the fiscal  
43      year of the original appropriation, the authority may cause the  
44      outside consultant to prepare a progress report covering the  
45      expenditure of appropriated funds and any progress in

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

      Matter underlined thus is new matter.

1 accomplishing the purpose of given appropriations, which may  
2 include comparisons of the actual time elapsed since the initial  
3 appropriation, actual expenditures from the appropriation, estimated  
4 time to completely expend appropriated funds, and estimated  
5 measurable outcomes for the entire appropriation between the most  
6 recent six-month period and those same actual and estimated times  
7 and outcomes in prior progress reports. Copies of each progress  
8 report shall be maintained on the authority's website and shall be  
9 submitted to the Governor and, pursuant to section 2 of P.L.1991,  
10 c.164 (C.52:14-19.1), to the Legislature.

11

12 2. (New section) a. In order to ensure the expeditious  
13 completion of public highway projects, the department shall  
14 coordinate with municipalities and counties to expedite project  
15 delivery.

16 b. The department shall develop, in conjunction with county  
17 officials, an annual highway project priority list for each county.  
18 The department shall present to county officials in each county a  
19 candidate list of State highway pavement areas rated below  
20 acceptable condition and structurally deficient State bridges located  
21 in the county. The county may select highway pavement areas and  
22 bridges from that candidate list that it deems to be priority repairs to  
23 be placed on the highway project priority list and submit the  
24 highway project priority list to the Commissioner of Transportation  
25 for his or her consideration for inclusion in the department's capital  
26 program. Once a project from the highway project priority list has  
27 been added to the capital program, the department shall have three  
28 fiscal years to advance that project to the construction phase of  
29 work subject to the availability of funds.

30 c. A county may add projects to the highway project priority list  
31 each fiscal year with an estimated total cost that is equivalent to or  
32 less than the amount that is to be granted to that county in that fiscal  
33 year from the formula established in subsection e. of section 25 of  
34 P.L.1984, c.73 (C.27:1B-25) through the Local County Aid  
35 Program.

36 d. If a project on the highway project priority list that has been  
37 placed on the capital program by the commissioner is not started  
38 within three years of that project's inclusion in the capital  
39 program, a county may notify the department that the county  
40 intends to take over the project.

41 e. Once the department has been notified of a county's intent to  
42 take over a project on the highway project priority list, the  
43 department and notifying county shall confer regarding whether the  
44 decision to allow the county to take over the project is cost-  
45 effective and will expedite completion of the project. The  
46 department shall have the discretion to determine whether to  
47 transfer the project to the county based on whether the transfer is  
48 cost-effective and will expedite completion of the project. If the

1 department agrees to transfer the project, the department shall have  
2 90 days from the date it agrees to the transfer to transfer all aspects  
3 of the project to the engineering department of the notifying county.

4 f. The costs of any project transferred to a county pursuant to  
5 this section shall be fully funded by the department on a  
6 reimbursement basis. If the cost of the project exceeds already  
7 existing capital program appropriations for that project, the  
8 department shall include in the capital program any additional  
9 amounts needed to complete the project.

10 g. The highway project priority list shall contain only State  
11 transportation projects. If a State project on the highway project  
12 priority list is transferred to a county pursuant to the provisions of  
13 this section, completion of the project shall continue to be funded  
14 through department capital program appropriations. Grant funds  
15 awarded through the Local Aid Program pursuant to section 25 of  
16 P.L.1984, c.73 (C.27:1B-25) shall not be used on any project on the  
17 highway project priority list.

18 h. If the department and a county agree that a county is better  
19 suited to advance a project on the highway project priority list, the  
20 department may also enter into an agreement with the county to  
21 transfer a project to the county notwithstanding whether the project  
22 has been in the capital program for less than three years.

23 i. All transportation projects included in the highway project  
24 priority list and transferred by the department pursuant to  
25 subsection e. or subsection h. of this section shall comply with  
26 section 24 of P.L.1984, c.73 (C.27:1B-24), chapters 32 through 35  
27 of Title 52 of the Revised Statutes, and any other provision of law  
28 concerning the State's public bidding requirements and business  
29 set-aside programs.

30

31 3. (New section) a. As used in this section:

32 "Project bundle" means any group of transportation projects that  
33 are combined into a single design contract under the design  
34 bundling program.

35 "Transportation Project Design Bundling Program" or "design  
36 bundling program" means a department process where multiple  
37 transportation project design contracts, funded in whole or in part  
38 by the Transportation Trust Fund, are combined into a single  
39 transportation project design contract for the purposes of saving the  
40 department time or money. The "Transportation Project Design  
41 Bundling Program" or "design bundling program" shall not include  
42 any construction contracts among the transportation projects in the  
43 program.

44 b. The Transportation Project Design Bundling Program is  
45 hereby established within the department to save time and money  
46 on transportation projects by allowing multiple transportation  
47 projects to be combined into a single design contract.

1       c. All transportation projects, including but not limited to,  
2 transportation projects contained in the department's bridge  
3 inspection, safety, and pavement asset management systems, and  
4 any transportation assets identified by the department as being in  
5 need of repair, may be included in the design bundling program if  
6 the projects meet all of the following criteria: (1) the transportation  
7 projects are similar in complexity, in the same capital investment  
8 strategy (CIS) asset category, or are in reasonable geographical  
9 proximity to one another; (2) the transportation projects are of  
10 similar size or design; (3) the transportation projects will not  
11 require a more stringent environmental permitting process or  
12 increase the environmental review time as a result of their inclusion  
13 in the design bundling program; and (4) the inclusion of  
14 transportation projects in the design bundling program will provide  
15 the department with cost and time savings.

16       d. The commissioner shall develop the design bundling  
17 program with the following minimum requirements:

18       (1) The department shall annually develop a preliminary list of  
19 transportation projects that are intended to be included in project  
20 design bundles. The department shall identify project design  
21 bundles for different regions of the State for geographically  
22 combinable transportation projects and project design bundles on a  
23 Statewide basis for similar transportation project types and similar  
24 CIS asset categories. The preliminary list shall include all  
25 transportation projects meeting the eligibility requirements  
26 established in subsection c. of this section;

27       (2) The department shall notify any local government entity that  
28 is substantially impacted by the project design bundles  
29 recommended for inclusion in the design bundling program. The  
30 department shall also distribute the preliminary list to the North  
31 Jersey Transportation Planning Authority, the South Jersey  
32 Transportation Planning Organization, and the Delaware Valley  
33 Regional Planning Commission; and

34       (3) Once the department has obtained all of the necessary  
35 approvals for transportation projects in the design bundle from  
36 applicable governmental entities, the department shall annually,  
37 publicly issue a final list of transportation design projects to be  
38 included in the design bundling program, prior to issuing the  
39 respective contracts for project design bundles.

40       e. Notwithstanding any other law to the contrary,  
41 transportation design projects determined to be eligible and  
42 recommended for inclusion in the design bundling program by the  
43 department shall not require specific itemization in a capital budget,  
44 but any capital funds expended on the design bundling program  
45 shall be provided for in a single capital program line item for each  
46 project design bundle under the design bundling program.

47       f. Any transportation projects included in the design bundling  
48 program established pursuant to subsection b. of this section shall

1 comply with section 24 of P.L.1984, c.73 (C.27:1B-24), chapters 32  
2 through 35 of Title 52 of the Revised Statutes, and any other  
3 provision of law concerning the State's public bidding requirements  
4 and business set-aside programs.

5  
6 4. (New section) a. There is hereby established within the  
7 Department of Transportation, the New Jersey Transportation  
8 Research Center, hereinafter referred to as the center.

9 b. The center shall be located within the Department of  
10 Transportation, and the center shall award research contracts to  
11 New Jersey public research institutions of higher education to  
12 conduct the research activities of the center. The award of those  
13 research contracts shall be subject to all relevant existing State and  
14 federally established public bidding regulations and processes.

15 c. The center shall identify specific areas of transportation  
16 expertise at New Jersey public research institutions of higher  
17 education, where all research undertaken by the center in that area  
18 of expertise is to occur, and shall be subject to all relevant existing  
19 State and federally established public bidding regulations and  
20 processes.

21 d. The Commissioner of Transportation shall appoint a director  
22 for the center. The duties of the director shall include but not be  
23 limited to:

- 24 (1) Administering and operating the center;  
25 (2) Overseeing research undertaken by the center;  
26 (3) Establishing and maintaining relationships with New Jersey  
27 public research institutions of higher education;  
28 (4) Supporting New Jersey public research institutions of higher  
29 education in obtaining and maintaining University Transportation  
30 Center status under the United States Department of Transportation  
31 Federal Highway Administration's University Transportation  
32 Center Program; and

33 (5) Authorizing competitive bidding for research contracts to  
34 include entities in addition to New Jersey public research  
35 institutions of higher education, notwithstanding the provisions of  
36 subsections b. and c. of this section to the contrary, after making a  
37 written determination that the department stands to benefit from  
38 additional competition in terms of quality of work product,  
39 timeliness of work product delivery, or availability of expertise in  
40 one or more specific transportation areas.

41 e. For purposes of this section, "entities" means an entity that is  
42 organized as a non-profit organization. "Entities" shall not include  
43 a municipal planning organization or a municipal planning  
44 organization-related entity, regardless of whether it is organized as  
45 a non-profit organization.

46  
47 5. Section 21 of P.L.1984, c.73 (C.27:1B-21) is amended to read  
48 as follows:

1       21. a. There is hereby established a separate fund entitled  
2 "Special Transportation Fund." This fund shall be maintained by the  
3 State Treasurer and may be held in depositories as may be selected  
4 by the treasurer and invested and reinvested as other funds in the  
5 custody of the treasurer, in the manner provided by law. The  
6 commissioner may from time to time (but not more frequently than  
7 monthly) certify to the authority an amount necessary to fund  
8 payments made, or anticipated to be made by or on behalf of the  
9 department, from appropriations established for or made to the  
10 department from revenues or other funds of the authority. The  
11 commissioner's certification shall be deemed conclusive for  
12 purposes of the act. The authority shall, within 15 days of receipt  
13 of the certificate, transfer from available funds of the authority to  
14 the treasurer for deposit in the Special Transportation Fund the  
15 amount certified by the commissioner, provided that all funds  
16 transferred shall only be expended by the department by project  
17 pursuant to appropriations made from time to time by the  
18 Legislature for the purposes of the act.

19       b. The department shall not expend any money except as  
20 appropriated by law. Commencing with appropriations for the  
21 fiscal years beginning on July 1, 1988, the department shall not  
22 expend any funds, other than for permitted maintenance, except as  
23 are appropriated by specific projects identified by a description of  
24 the projects, the county or counties within which they are located,  
25 and amounts to be expended on each project, in the annual  
26 appropriations act. Funds expended for permitted maintenance may  
27 be appropriated as one item of appropriation and subject to  
28 allocation at the commissioner's discretion.

29       c. No funds appropriated, authorized, or expended pursuant to  
30 this act shall be used to finance the resurfacing of highways by  
31 department personnel, where that resurfacing would require the use  
32 of more than 100,000 tons of bituminous concrete for that purpose  
33 in any calendar year, except that the commissioner may waive this  
34 provision when the commissioner determines the existence of  
35 emergency conditions requiring the use of department personnel for  
36 the resurfacing of highways, after the department has effectively  
37 reached the 100,000 ton limit.

38       d. In order to provide the department with flexibility in  
39 administering the specific appropriations by project identified in the  
40 annual appropriations act, the commissioner may transfer a part of  
41 any item to any other item subject to the approval of the Director of  
42 the Division of Budget and Accounting and of the Joint Budget  
43 Oversight Committee or its successor. Upon approval of the  
44 director and the committee, the transfer shall take effect.

45       e. Any federal funds which become available to the State for  
46 transportation projects which have not been appropriated to the  
47 department in the annual appropriations act, shall be deemed  
48 appropriated to the department and may, subject to approval by the

- 1 Joint Budget Oversight Committee and the State Treasurer, be  
2 expended for any purpose for which such funds are qualified.
- 3 f. There shall be no appropriations from the revenues and other  
4 funds of the authority for regular and routine maintenance of public  
5 highways and components thereof, or operational activities of the  
6 department unrelated to the implementation of, and indirect costs  
7 associated with, the capital program. The commissioner shall  
8 include in his annual budget request sufficient funding to effectuate  
9 the purposes of P.L.2000, c.73 (C.27:1B-21.14 et al.).
- 10 g. To the extent that salaries or overhead of the department or  
11 the New Jersey Transit Corporation are charged to transportation  
12 projects, each agency shall keep adequate and truthful personnel  
13 records, and time charts to adequately justify each such charge, and  
14 shall make those records available to the external auditor to the  
15 authority.
- 16 h. The commissioner shall annually, on or before January 1 of  
17 each fiscal year, report to the Governor and the Legislature how  
18 much money was expended in the previous fiscal year for salaries  
19 and overhead of the department and the New Jersey Transit  
20 Corporation. However, the amount expended from the revenues  
21 and other funds of the authority for salaries and overhead of the  
22 department and the New Jersey Transit Corporation for the fiscal  
23 year beginning July 1, 2006 through the fiscal year beginning July  
24 1, 2015 shall not exceed 13 percent of the total funds appropriated  
25 from the revenues and other nonfederal funds of the authority for  
26 those fiscal years, and shall not exceed \$208,000,000 for the fiscal  
27 year beginning July 1, 2016 and each fiscal year thereafter.
- 28 i. No revenues or other funds of the authority shall be  
29 expended for emergency response operations, the review of  
30 applications for access permits under the State highway access  
31 management code and membership fees or other fees connected  
32 with membership in TRANSCOM, the Transportation Operations  
33 Coordinating Committee.
- 34 j. Every project in which revenues or other funds of the  
35 authority are expended shall be included on a website created by the  
36 authority whose exclusive purpose shall be reporting on the status  
37 of State and federal projects and serving as a singular location for  
38 State and federal public documentation concerning those projects.  
39 The website shall document the status of each project, presented in  
40 tabular form outlining the budgeted amount, the amount spent and  
41 committed, and the amount necessary to complete each project. The  
42 website shall include a chart which compares the planned and actual  
43 quarterly and cumulative expenditures for each project. The  
44 website shall chronicle actions which have a bearing on the  
45 progress of projects, including, but not limited to, awards for legal,  
46 insurance, and engineering services, environmental review, public  
47 involvement and outreach, property acquisitions, and construction  
48 contracts. The website shall also include a description of any action



1 by an external regulatory agency such as the Department of  
2 Environmental Protection, or any other party, which occurred  
3 during the reporting period that affected the cost or timely  
4 completion of any project in any manner. Information concerning  
5 each project shall be included and updated, at minimum, once per  
6 month.

7 k. There shall be a minimum appropriation from the revenues  
8 and other funds of the authority of \$25,000,000 each fiscal year,  
9 commencing with the fiscal year beginning July 1, 2016 for the  
10 design, construction, reconstruction, rehabilitation, land acquisition,  
11 and environmental mitigation of freight rail projects that include the  
12 following factors: are significant to port commerce connectivity;  
13 eliminate rail freight missing links to port facilities; **[or]** upgrade  
14 freight rail trackage to a 286,000 pound load carrying capacity; or  
15 support a safe, efficient, and effective rail freight system consistent  
16 with the commissioner's rail freight authority pursuant to section 2  
17 of P.L.1986, c.56 (C.27:1A-5.1). The amount appropriated pursuant  
18 to this subsection shall be inclusive of all amounts annually  
19 appropriated for the New Jersey Rail Freight Assistance Program.  
20 (cf: P.L.2016, c.56, s.4)

21  
22 6. The Department of Transportation shall adopt regulations  
23 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
24 (C.52:14B-1 et seq.), to effectuate the provisions of  
25 P.L. , c. (C. ) (pending before the Legislature as this bill).

26  
27 7. This act shall take effect immediately.

## 28 29 30 STATEMENT

31  
32 This bill revises the process by which capital projects authorized to  
33 be paid for through the New Jersey Transportation Trust Fund are to  
34 be administered.

### 35 36 Capital Program Consultant Reports

37 The Transportation Trust Fund Authority (authority) may hire  
38 engineering consultants to generate bi-annual reports which identify,  
39 for each transportation project and public transportation project, the  
40 progress achieved in expending capital funds and the progress  
41 achieved in completing capital projects. The authority may also hire  
42 an outside consultant to generate a bi-annual report on all non-project  
43 line items in the annual capital program that are not included in the  
44 engineering consultant's report. This report is to focus on the progress  
45 achieved in expending funds appropriated in the capital program and  
46 provide a description of how those funds are being expended,  
47 including but not limited to, contracts, employment levels, and  
48 measurable outcomes relating to each capital program line item.

1   Highway Project Priority List

2       The bill requires the Department of Transportation (department) to  
3   develop an annual highway project priority list for each county. The  
4   highway project priority list is a list of State highway projects chosen  
5   by the counties in which the projects are located, from a candidate list  
6   provided by the department to the counties of all structurally deficient  
7   State bridges and State highway pavement areas in less than acceptable  
8   condition. The dollar amount of projects that a county can add to the  
9   list each year is limited by the amount of grant money a county is  
10   statutorily scheduled to receive each year through the local county aid  
11   program. The commissioner is to consider each highway project  
12   priority list for the inclusion of those projects into the capital program  
13   subject to the availability of funds. If the State is unable to begin a  
14   project on the highway project priority list that was included into the  
15   capital program within three fiscal years, the county can confer with  
16   the department, and if the department finds that allowing the county to  
17   take over the project is cost-effective and will expedite completion of  
18   the project, the department can transfer the project to the county. The  
19   department is to remain responsible for the cost of the project and  
20   provide payments to the county for the cost of the project on a  
21   reimbursement basis. If the department and county agree that a county  
22   is better suited to complete a project on the list, the department and  
23   county can also form an agreement and transfer the project to a county  
24   in less than three years. For all projects on the list, regardless of  
25   whether a county has taken over completion of a project, local aid  
26   program funds are not to be used for these projects. All projects are  
27   State projects and are to be funded with department capital  
28   appropriations. Projects on the list that are transferred to a county are  
29   still required to adhere to all existing State procurement laws,  
30   including those applying to bidding and business set-asides.

31

32   Project Bundling

33       The bill requires the department to bundle the design of certain  
34   transportation design projects funded, in whole or in part, by the  
35   Transportation Trust Fund. Projects that are eligible to be bundled are  
36   projects of similar complexity, project type, or geographic proximity,  
37   that are of similar size or design, where the bundling of design projects  
38   will not require more stringent environmental review, and whose  
39   inclusion in the program will save the department time or money. The  
40   purpose of the program is to save costs and time by allowing multiple  
41   transportation projects to be designed under a single contract.  
42   Contracts issued under the design bundling program are still required  
43   to adhere to all existing procurement laws, including those applying to  
44   bidding and business set-asides.

45

46   New Jersey Transportation Research Center

47       This bill establishes the New Jersey Transportation Research  
48   Center (center) within the department. The Commissioner of

1 Transportation is to appoint a director of the center. The director is to  
2 award research contracts to New Jersey public research institutions of  
3 higher education (institutions). The center is to identify specific areas  
4 of expertise for institutions. The institutions are to conduct research  
5 for the center in their areas of expertise, pursuant to research contracts  
6 that are awarded in a manner that is subject to all relevant existing  
7 State and federally established public bidding regulations and  
8 processes. In addition to operating and administering the center and  
9 awarding research contracts, the director is responsible for supporting  
10 institutions in obtaining and maintaining status as University  
11 Transportation Centers under the United States Department of  
12 Transportation Federal Highway Administration University  
13 Transportation Centers Program. The director may authorize  
14 competitive bidding for the awarding of research contracts, after  
15 making a determination that the department stands to benefit from  
16 additional competition in terms of quality of work product, timeliness  
17 of work product delivery, or availability of expertise in one or more  
18 specific transportation areas. This competitive bidding process is to  
19 include certain non-profit entities in addition to the New Jersey public  
20 research institutions of higher education that may be awarded a  
21 contract.

22

#### 23 Freight Rail Assistance Program

24 This bill amends the “Special Transportation Fund” statute  
25 concerning the annual appropriations for the State Freight Rail  
26 Assistance Program (FRAP) to make clear that grants can be provided  
27 to projects that support a safe, efficient, and effective rail freight  
28 system which makes the program qualifications consistent with the  
29 parameters used to choose FRAP projects prior to the most recent  
30 Transportation Trust Fund renewal.